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IN THE

Supreme Court of the United States

OCTOBER TERM 1946.

No. 1306.

UNITED STATES OF AMERICA

v.

JAMES M. HEARNE.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

Respondent respectfully prays that the petition for a writ of certiorari to review the judgment of the Court of Claims in this case be denied.

Opinion Below.

The opinion of the Court of Claims (R. 49-57) has not yet been officially reported.

Jurisdiction.

The judgment of the Court of Claims was entered on January 6, 1947 (R. 67). On April 4, 1947, on motion of the Acting Solicitor General, the Chief Justice extended the

time within which to file a petition for certiorari to May 5, 1947 (R. 105). The jurisdiction of this Court is invoked under the provisions of Section 3 (b) of the Act of February 13, 1925, as amended.

Questions Presented.

1. Whether overtime compensation under Section 23 of the Act of March 28, 1934, was payable for the period here in issue, to respondent, an employee of the Panama Canal on floating equipment, whose compensation was fixed on a *monthly* basis pursuant to a recommendation by a wage board.

2. Whether respondent's compensation was "* * * set by wage boards or other wage-fixing authorities * * *" within the meaning of Section 23 of the Act of March 28, 1934.[1]

Statute Involved.

Section 23 of the Act of March 28, 1934, c. 102, 48 Stat. 522, 5 U. S. C. 673c, provides:

> The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: *Provided*, That the regular hours of labor shall not be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one-half.

[1] Petitioner states too broadly the second question presented. The Court below did not hold that Section 23 applied to all Government employees except those covered by the Classification Act or special statutory schedules.

STATEMENT.

On March 14, 1940, the respondent, an employee of the Panama Canal, brought suit against the United States in the Court of Claims to recover overtime compensation under Section 23 of the Act of March 28, 1934, *supra*, for work performed by him in excess of 40 hours per week from the date of enactment of the statute to the date of the filing of his suit (R. 1-2). The claim involves substantially the same facts, and the identical legal issues as were presented in *United States* v. *Townsley*, 323 U. S. 557.

Since March 28, 1934, and until March 14, 1940, the respondent was employed by the Panama Canal on a pipe line suction dredge, in various capacities, at monthly rates of pay ranging from $291 to $311 (R. 3, 5). During this period respondent's regular work week was 48 hours, composed of six 8-hour days, until June 30, 1939, when it was reduced to 44 hours per week (R. 6).

Since at least 1929, respondent's monthly rates of pay, and those of most other employees on floating equipment in the Panama Canal, have been fixed by the Governor, after recommendations of a wage board, on the basis of the rates of pay of floating equipment employees of the Engineer Corps of the United States Army working in the continental United States, plus the usual 25 per cent differential for Canal Service and an allowance for subsistence (R. 10). The wage rates for floating equipment employees paid by the Engineer Corps were in turn based upon rates prevailing in private industry for similar work. (Finding 9, R. 10 and Finding 29, R. 27-28.)

The wage board of the Panama Canal was created by the Governor on March 11, 1919 (R. 7). Like the other Federal wage boards, it does not fix rates but recommends or proposes rates. (R. 7, 9, 10, 11, 35-38, 39, 40)

The petitioner advanced three principal contentions in the court below: first, that section 23 was not applicable to respondent, whose compensation is fixed on a monthly basis; second, that respondent's compensation was not

"set by wage boards or other wage-fixing authorities" within the meaning of Section 23; and third, that respondents claim was barred by laches. The Court of Claims rejected all of these contentions and entered judgment for respondent (R. 49-57, R. 67).

Reasons for Denying Writ.

1. The question whether monthly employees on floating equipment of the Panama Canal whose compensation is set by "wage boards or other wage-fixing authorities" are entitled to overtime pay under Section 23 has already been decided by this Court in *United States* v. *Townsley*, 323 U. S. 557. In so far as pertinent the facts in the present case and the Townsley case are identical. No valid reason for reconsidering this question has been advanced by petitioner in the present case.

Petitioner's principal reason for requesting reconsideration of this question is, it asserts, that this Court in the *Townsley* case, mistakenly understood (1) that the Governor of the Panama Canal attempted to reduce the compensation of monthly floating equipment employees of the Dredging Division, such as Townsley and respondent despite the Comptroller General's ruling that this was prohibited by Section 23; (2) that the Governor, relying on the Comptroller General's ruling that monthly employees could not be paid overtime, regularly worked the floating equipment employees more than 40 hours per week despite the Comptroller General's ruling to the contrary; and (3) that the administrative construction by the Governor was in contradistinction to that of other departments and agencies of the Government.

It is true that the Comptroller General's first ruling to the Governor held that Section 23 did not apply to floating equipment employees of the Panama Canal and that it was speaking of the monthly employees of an entirely different division of the Panama Canal, i.e., the Locks Division, when it held that Section 23 prohibited reduction of their com-

pensation, limited their regular workweek to 40 hours, but that they should not be paid overtime (R. 19, 20). Thus the Governor did not disregard this ruling when he continued to work floating equipment employees overtime, and ignored it only in the case of certain Locks Division employees whom he placed on a 40-hour week, but whose monthly rates of pay he converted to hourly rates which yielded them less weekly compensation for the 40-hour week than they had previously received for the 48 hours which they had worked when on a monthly basis (R. 22, 23, 24). Following the Comptroller General's second ruling, the Governor reconverted the hourly rate of the Locks Division employees to their original monthly rate and reduced their workweek to 40 hours (R. 30-31). This was in accordance with the general practice of other "wage boards or wage-fixing authorities" of following the rulings of the Comptroller General which prohibited a regular workweek of more than 40 hours for monthly or annual wage board employees but which held that such employees should not be paid overtime (R. 40, 41, 42, 43; see also 13 Comp. Gen. 265, 269; 13 id. 277, 278; 13 id. 307).[2]

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[2] Petitioner asserts that the overwhelming administrative practice, under Section 23, shows that monthly and annual employees actually worked more than 40 hours per week, both occasionally and regularly, and cites pages 40 to 49 of the record in support of this assertion. An examination of the record shows that in those cases where the administrator was assisted by a wage board the general rule, up to the time at least of the war emergency, was to follow the rulings of the Comptroller General that monthly or annual wage board employees should not regularly be worked more than 40 hours per week, and should not be paid overtime. (See R. 30-31 as to the Panama Canal; R. 40-41, as to the Navy Yards; R. 41-42, as to the War Department, R. 43, as to the Government Printing Office.) The balance of the record relied upon by petitioner merely shows that there were in some departments, some employees whose wages were fixed administratively, and who were worked overtime, either occasionally or regularly more than 40 hours per week, without receiving overtime pay. The reason for doing so is not revealed. Such action may have been based upon a ruling of the Comptroller General that Section 23 did not apply to any employees unless a wage-board procedure had been formal-

Respondent submits that any misunderstanding upon the part of this Court concerning the Governor's application of the Comptroller General's ruling to such floating equipment employees has no bearing whatsoever on the question whether monthly employees whose compensation is set by "wage boards or other wage-fixing authorities" are entitled to overtime compensation under Section 23. From a reading of this Court's opinion in the *Townsley* case there can be no doubt but that the Court understood that the general practice among the other "wage boards or wage-fixing authorities" was to follow the rulings of the Comptroller General prohibiting the regular workweek of their monthly or annual employees to exceed 40 hours, prohibiting the reduction of their compensation, but refusing to permit payment to them of overtime compensation. 323 U. S. at pp. 567-568. As shown in the preceding paragraph of this brief, the Court's understanding of the general practice of such other agencies was correct. However, with knowledge of this general practice—an impossible construction which applied to such monthly wage-board employees all of the provisions of Section 23 except that relating to the payment of overtime—this Court held that under Section 23 these monthly wage-board employees were entitled to the payment of overtime. It is not seen therefore, that the fact that one more agency, i.e., the Panama

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ized to a considerable degree, 14 Comp. Gen. 215, 217; or upon a ruling that excluded the application of Section 23 to employees who were not within the "several trades and occupations" within the meaning of Section 23, 14 Comp. Gen. 42. Further, many of the employees referred to by petitioner were paid by administrative adoption of the Classification Pay Act Schedules and it is possible for that reason that they were not regarded as being covered by Section 23. (See 25 Comp. Gen. 41). In any event, there is nothing in the record to show that any of the administrators who worked their employees more than 40 hours a week without paying overtime did so because they interpreted Section 23 as not applying to monthly or annual wage board employees. Certainly the record fails to show an "overwhelmingly consistent administrative practice" to regularly work monthly or annual wage board employees more than forty hours per week without overtime pay.

Canal, followed the rulings of the Comptroller General is any reason for reconsidering the question whether monthly employees whose compensation is set by "wage boards or other wage-fixing authorities" are entitled to overtime compensation under Section 23.

It is significant that the Government, despite full knowledge that this Court did not correctly understand the Governor's application of the rulings of the Comptroller General,[3] did not request a rehearing in the *Townsley* case.

Petitioner repeats the argument it advanced in the *Townsley* case that subsequent legislation shows that Congress did not intend to apply Section 23 to such monthly wage-board employees. The legislative materials upon which petitioner relies were, with the exception of the Federal Employees Pay Act of 1945 (Act of June 30, 1945, c. 212, 59 Stat. 295) set out exhaustively in the Government's brief in the *Townsley* case (No. 134, October Term 1944, at pp. 28-41). They were considered by this Court and rejected as a ground for holding that Section 23 did not apply to these monthly employees. 323 U. S. at pp. 570-573. It is not seen, therefore, that any reason exists for reconsidering such legislative materials.

As to the Federal Employees Pay Act of 1945, *supra*, petitioner contends that there was no reason to enact Section 203, prescribing for monthly and annual wage-board employees the same formula for overtime as laid down by this Court in the *Townsley* case,[4] if such employees had

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[3] In a footnote to its brief in this Court in the *Townsley* case (No. 134, October Term, 1944, at page 8) the Government stated:

> "* * * The Comptroller General also ruled that Section 23 was not applicable in any respect to employees of the Panama Canal 'on floating equipment' because their wages were not fixed through wage board procedure. 14 Comp. Gen. 156, 158."

[4] Section 203 of the Federal Employees Pay Act of 1945 provides:

> "Sec. 203. Employees whose basic rate of compensation is fixed on an annual or monthly basis and adjusted from time

previously been entitled to overtime under Section 23 of the Act of 1934, since Section 102(c) of the Federal Employees Pay Act of 1945 already excludes wage-board employees generally from the application of the 1945 act. However, the legislative history of this Act clearly shows that Section 203 was adopted not because it was thought that Section 23 of the 1934 Act did not entitle these employees to overtime but merely out of an abundance of caution. Mr. Kushnick of the War Department, appearing at the hearings before the Committee on Civil Service, House of Representatives, was the one who suggested that provision be made for monthly and annual wage-board employees. In this connection, he stated:

> "The Department also recommends that the overtime provisions of the two bills be amended to include those wage-board employees whose wages are fixed on an annual basis. This can be accomplished by adopting the language of Public Law 49 for inclusion in section 101 of this bill and by inserting in section 102 (d) language which would restrict its exemption to daily and hourly employees. It may be true that under present court decisions per annum wage-board employees are entitled to overtime under another law. However, in

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to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose shall be entitled to overtime pay in accordance with the provisions of section 23 of the Act of March 28, 1934 (U. S. C., 1940 edition, title 5, sec. 673c). The rate of compensation for each hour of overtime employment of any such employee shall be computed as follows:

(a) If the basic rate of compensation of the employee is fixed on an annual basis, divide such basic rate of compensation by two thousand and eighty and multiply the quotient by one and one-half; and

(b) If the basic rate of compensation of the employee is fixed on a monthly basis, multiply such basic rate of compensation by twelve to derive a basic annual rate of compensation, divide such basic annual rate of compensation by two thousand and eighty, and multiply the quotient by one and one-half." (59 Stat. 297)

view of the possibility of further litigation on this point, we should like very much to play safe, with an assurance that these employees are definitely covered by existing legislation. * * *'' (Hearings on H.R. 2497 and H.R. 2703, 79th Cong., 1st Sess., page 100)

Petitioner also asserts that the committee report on the 1945 Pay Act, quoted at pages 15-16 of the petition, indicates a Congressional purpose of expanding the scope of Section 23 to include monthly and annual wage-board employees. While this report states that at the time of the 1943 War Overtime Pay Act such employees were not regarded as falling within Section 23 of the Act of March 28, 1934,[5] it then refers to this Court's decision in the *Townsley* case and states that it believes it to be sound to treat all wage-board employees alike. Respondent submits, by the same token, it is equally sound to treat all wage-board employees alike under Section 23, the terms of which are equally applicable to annual, monthly, daily or hourly employees. However Section 23 may have been regarded at the time the War Overtime Pay Act of 1943 was enacted, it

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[5] As shown *supra* the Comptroller General had consistently ruled that monthly wage board employees were entitled to all of the benefits of Section 23 except the payment of overtime (13 Comp. Gen. 265, 269, 13 Comp. Gen. 277, 13 Comp. Gen. 307, 14 Comp. Gen. 156). Moreover, it is by no means clear that Congress at the time of the enactment of the 1943 War Overtime Pay Act believed that monthly wage board employees were not covered by Section 23. This is shown from the testimony of Mr. McReynolds, Administrative Assistant to the President, in the hearings before the Subcommittee of the Committee on Civil Service, United States Senate, shortly before the enactment of the War Overtime Pay Act of 1943 (Act of May 7, 1943, c. 93, 57 Stat. 75):

"Mr. McReynolds. The main wage board groups are covered by legislation—permanent legislation.

Senator Mead. That is right.

Mr. McReynolds. Governed by the practice in industry, whatever that is.

Senator George. Are those employees employed on a monthly basis?

Mr. McReynolds. Hourly, daily and monthly."

(Hearings on S. 635, 78th Cong., 1st Sess., p. 6)

is obvious from this report and from Section 203 of the Federal Employees Pay Act of 1945 that Congress now approves this Court's interpretation of Section 23 in the *Townsley* case. Respondent, therefore, submits that there is nothing in the legislative history of the 1945 Federal Employees Pay Act which would justify a reconsideration of the question whether Section 23 of the Act of March 28, 1934, applies to monthly wage-board employees on floating equipment of the Panama Canal.

2. No valid reason exists why this Court should reconsider the question whether the compensation of Panama Canal floating equipment employees, such as Townsley and respondent, was set by "wage boards or other wage-fixing authorities" within the meaning of Section 23. In the *Townsley* case the Government asserted in the Court of Claims that the compensation of such employees was not based upon rates prevailing in private industry, and that it was not, therefore, set by "wage boards or other wage-fixing authorities" within the meaning of Section 23 (pages 58-62 of the record in C. Cls. No. 45097). The Court of Claims rejected this contention in *Townsley* v. *United States*, 101 C. Cls. 237, 254, and in so doing, mistakenly asserted that the Comptroller General had held Section 23 applicable to floating equipment employees of the Panama Canal. With full knowledge of this error,[6] the Government, before this Court, abandoned its contention that the compensation of Panama Canal floating equipment employees was not fixed by "wage boards or other wage-fixing authorities" within the meaning of Section 23. See *United States* v. *Townsley*, 323 U. S. 557, 559. This Court then held that the compensation of such employees was set by "wage boards or other wage-fixing authorities." This Court's opinion in the *Townsley* case indicates that it also understood that the Comptroller General ruled that Section 23 was applicable to such employees. Although the Government had full knowledge of this misunderstanding it did

[6] See footnote 3, *supra* p. 7.

not think it of sufficient importance to request a rehearing. Coupling this with the fact that petitioner attached so little importance to the misunderstanding of the Court of Claims in this connection that it made only passing reference to it in a footnote to its brief in this Court in the *Townsley* case, it is obvious that this point does not possess that importance which petitioner now seeks to attach to it. Petitioner's assertion that it did not apply for rehearing in the *Townsley* case because it thought the record was inadequate cannot be reconciled with the fact that the Government, and not *Townsley,* applied for and obtained certiorari in that case.

It should be here pointed out that the Comptroller General's ruling that Section 23 was not applicable to floating equipment employees of the Panama Canal, is not entitled to any weight whatever in construing Section 23 since it was based upon his mistaken understanding that the rates of floating equipment employees, like those of policemen and firemen, were fixed by or pursuant to statute (R. 19-20). As to policemen and firemen of the Panama Canal, the Comptroller General's understanding was correct, their compensation being based upon the statutory rates for policemen and firemen in the District of Columbia (R. 21, 91; see also 25 Comp. Gen. 41). As to floating equipment employees of the Panama Canal his understanding was decidedly incorrect, their rates being fixed upon the recommendation of the wage board. As previously pointed out the wage board recommendations were based on the rates of floating equipment employees of the United States Engineers, whose rates in turn were based on those prevailing in private industry (Finding 9, R. 10, Finding 29, R. 27-28). However, despite the fact that the Governor knew that the Comptroller General misunderstood the facts upon which he based his ruling concerning floating equipment employees of the Panama Canal, and despite the fact that the employees' representatives pointed out to the Governor that the Comptroller General's ruling was based upon a

misunderstanding and requested that the correct facts be submitted by him to the Comptroller General, the Governor never saw fit to do so (R. 21-22, 25, 83-84, 91).

In the present case petitioner again advances the contention that the compensation of Panama Canal employees on floating equipment was not set by "wage boards or other wage-fixing authorities" within the meaning of Section 23. The point is not valid.

Senator Thomas, the author of Section 23, stated on the floor of the Senate that the purpose of Section 23 was to help employees "in the navy yards, the arsenals, the Panama Canal Zone, the Government Printing Office, and the Bureau of Engraving and Printing" (78 Cong. Rec. 2977). The compensation of floating equipment employees of the Panama Canal, who have been denied the benefits of Section 23, as well as the compensation of employees of the Locks Division of the Panama Canal, to whom Section 23 has been applied, both are fixed by the Governor upon the recommendation of the same wage board. (R. 7-18, 19, 31). Section 23 has been applied to employees in the Navy Yards, Arsenals, and the Government Printing Office, who likewise have their compensation set by administrative officers upon the recommendation of wage boards (R. 10-11, 35-40, 40-43).

Petitioner, however, while not questioning the propriety of applying Section 23 to employees of the Locks Division, now insists that Section 23 does not apply to employees on floating equipment, even though the compensation of both is fixed by the Governor upon recommendation of the same wage board. There is nothing in the language of Section 23 or in its legislative history from which can be inferred any such Congressional intent or which justifies such an extraordinary interpretation.

It is petitioner's contention that wage-board employees are those whose wages are fixed by direct reference to private industry wages for comparable positions and that respondent's wages were not so fixed. However, an analysis of the application of Section 23 reveals that no such

inflexible rule exists. For example, Section 23 has been applied to certain per diem employees of the District of Columbia, whose rates are fixed after a study of rates paid by certain Government agencies, including the *U. S. Engineer Office,* and by certain private utilities, and whose rates are checked to make certain they do not exceed employees paid under the Classification Act[7] (R. 40, 49, 99-100). Section 23 has also been applied to Navy Yard employees although wage boards were abandoned in the Navy Yards from 1929 to 1940 (R. 37, 40-41, 95-97). It was applied to Locks Division employees of the Panama Canal whose rates were based upon rates paid in Navy Yards in the continental United States (R. 19-20, 23, 28-31, 84-90). Section 23 was also applied to certain truckdrivers of the Panama Canal whose hourly rates were derived from a combination of annual salaries paid by the Post Office Department and hourly rates of the Navy Yards, 14 Comp. Gen. 594.

From the above it is clear that there is in reality no inflexible wage board practice of fixing wage rates by direct reference to rates in private industry as petitioner asserts. Moreover, the record shows that the rates of floating equipment employees of the Panama Canal were, in the last analysis, based upon private rates. It shows that the majority of the rates paid to such employees, including respondent, were based upon rates paid to floating equipment employees of the United States Engineers (Fdg. 9, R. 10), and that the rates of such employees of the United States Engineers were based in turn upon those paid to similar employees in private industry in the vicinity (Fdg. 9, R. 10; Fdg. 29, R. 27-28). Respondent's witness Mangan testified that the local prevailing rate was not the

[7] It is interesting to note that at pages 21-22 of its petition the Government contends that Section 23 should not be applied to respondent because his rates were based upon rates paid by the United States Engineers and because, it asserts, the rates paid to such employees of the United States Engineers were closely compared with comparable rates provided by the Classification Act.

primary consideration in fixing rates for United States Engineer employees, that there was a "tendency" towards a nation-wide rate, and that local rates were compared to the closest rates in the Classification Act. However, he admitted that the method of fixing rates for the United States Engineers is described in the submission made by the Secretary of War to the Comptroller General in 1934 (R. 73-75). This submission is set out in Finding 29 (R. 27-28) and shows that the rates of such employees were fixed by the District Engineers or by the Chief of Engineers and the Secretary of War in accordance with the following principles: (1) Each employee must receive a living wage; (2) the rates, in recognition of the law of supply and demand, must be high enough to attract the numbers and kinds of employees needed; and (3) the rates must be in line with those paid similar employees in similar positions and trades in the vicinity, it being improper to pay materially more or materially less.

As stated by the Court below, it is difficult to think of a more accurate way of saying that compensation shall be fixed by the administrator on the basis of comparable commercial rates.

In summary, then, it is clear that the application of Section 23 to employees of the various departments and agencies has not involved any rigid principle that the compensation of such employees must be based directly upon prevailing commercial rates. The rates of floating equipment employees of the Panama Canal, such as respondent and Townsley, were based upon rates paid by the United States Engineers, which in turn were based directly upon those prevailing in the locality. Thus, respondent's rates were, in the last analysis, based upon prevailing commercial rates, which cannot be said of the compensation of many employees to whom Section 23 has been applied. It is therefore, clear that respondent's compensation, which was fixed by the Governor upon recommendation of the Wage Board, was set by "wage boards or other wage-fixing au

thorities" within the meaning of Section 23, and there is no reason why this Court should reconsider this point.

3. The question whether or not respondent is estopped by laches was correctly decided by the Court below, and moreover, is not of sufficient importance to justify extended consideration by this Court. In a footnote to page 6 of its petition, petitioner states that respondent regularly received his fixed compensation throughout the claim period without demand or protest for a 40-hour week or for overtime under Section 23, and with the understanding that his regular monthly compensation was understood and intended to be payment in full. This, petitioner states, amounted to an acquiesence whereby the Government lost its opportunity to place respondent and similar employees on a 40-hour week as was done by the Government in the case of the Locks Division employees. This point is without merit. As appears from the findings of the Court below (Finding 20, R. 21); Finding 23, R. 25; Finding 24, R. 25, R. 76, 77-78, 83-84) the employees' representatives did raise questions as to the rights of respondent and other floating equipment employees which gave the Governor a full and early opportunity to study the problem and to make up his mind whether Section 23 applied to such employees. The Court below (R. 56-57) emphasized the administrative confusion that existed in the various rulings applicable to such floating equipment employees and concluded that it would be unfair to impose the bar of laches under such circumstances, and that respondent's conduct had not been so inconsiderate of the rights of the Government as to forfeit the right given to him by Section 23. Moreover, one of the essential elements of estoppel is that the action or inaction of one party must have caused the other to act to his detriment. Although the Governor was produced as a witness in this case there is not one word of testimony in the record that he would have placed the floating equipment employees on a 40-hour week or that he would have acted in anyway different from his actual conduct in this case had he known that this Court would hold that under Section 23 such em-

ployees should not be worked more than 40 hours per week without the payment of overtime. That petitioner attaches little if any importance to this point is shown by the fact that although it raises the question of laches, in its Specification of Errors it does not urge it as one of the reasons for granting the writ.

4. The questions involved are not of the monetary importance suggested by the petitioner, nor does there exist the number of potential claims which the petitioner would have the Court believe. The amount involved in companion cases pending in the Court of Claims is substantially less than the $1,000,000 stated by petitioner, and the thousands of similar claims which petitioner asserts exist, apparently exist only in its imagination. Similar assertion was made by the Government in its petition for a writ of certiorari in the *Townsley case* (No. 134, October Term, 1944, pp. 19-20 of the Petition). Almost two and one-half years have elapsed since the rendition of this Court's decision in that case, yet no new cases have been filed. The Act of March 28, 1934, is now more than 13 years old, and even if petitioners assertion with respect to the number of potential claims that might arise under the Act were correct, it is obvious that practically all such claims would now be barred by the six-year statute of limitations.

CONCLUSION.

For the reasons stated, it is respectfully submitted that this petition should be denied.

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